



Paper No. 12

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OFFICE OF PETITIONS

In re Application of :
Donald L. Schilling :
Application No. 09/843,520 : DECISION REFUSING STATUS
Filed: 27 April, 2001 : UNDER 37 CFR 1.47(b)
Attorney Docket No. 1-2-32.3US :

This is in response to the renewed petition under 37 CFR 1.47(b) filed on 13 February, 2002 (certificate of mailing date 25 January, 2002).

The petition is again **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 27 April, 2001, without an executed oath or declaration. Accordingly, on 20 June, 2001, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. The petition under 37 CFR 1.47(b) filed on 21 September, 2001, was dismissed on 26 November, 2001.

Petitioner's counsel, Jeffrey M. Glabicki, states that he sent a copy of the application papers to the non-signing inventor. Attorney Glabicki further states that the inventor acknowledged receipt of the application during a telephone conversation, but

refused to sign and return the declaration. Petitioner also states that irreparable harm will result if the petition is not granted.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a statement of the last known address of the non-signing inventor;

(5) proof of proprietary interest, and

(6) proof of irreparable damage.

The petition lacks item (2).

As to item (2), the declaration filed with the present renewed petition is not in compliance with 37 CFR 1.63 and 1.64.¹ While the declaration does state the citizenship, residence, and mailing address of the individual signing on behalf of the Rule 47(b) applicant, that information has been placed in the signature block for the non-signing inventor himself, and the inventor's information is not included. Additionally, the title (president, vice president, secretary, or treasurer) of the person signing on behalf of the corporation has not been included. As such, the declaration suggests that the corporate officer signing for the Rule 47(b) applicant is actually the inventor.

Petitioner should submit a declaration in compliance with 37 CFR 1.63, 1.64, and 1.67 which includes a signature block for the non-signing inventor **and** a separate signature block for the individual signing on behalf of the corporation. The signature block for the non-signing inventor must include the mailing address, residence, and citizenship of the inventor, while the signature block for the person signing on behalf of the corporation must include the mailing address, residence, and citizenship, as well as the title (president, vice president, secretary, or treasurer) of that person. If the declaration is

¹See MPEP 409.03(b).

not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.² The signature block for the person signing on behalf of the corporation must indicate that the person is signing on behalf of and as agent for the non-signing inventor. The declaration will be acceptable if the signature block for the non-signing inventor is left blank and the signature block for the person signing on behalf of the corporation has been signed by that person.

It is noted that counsel's deposit account has been charged for the petition fee and late oath or declaration or filing fee surcharge. As these fees were previously paid, the duplicate payments charged with the present petition are unnecessary and will be credited to counsel's deposit account, No. 09-0435.

Receipt of the change of correspondence address filed 8 March, 2002, is acknowledged. All correspondence will be mailed to the new address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.



Douglas I. Wood
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

²MPEP 409.03(b).